



## IOWA GENERAL ASSEMBLY

### Administrative Rules Review Committee

STATEHOUSE \* ROOM 116 \* DES MOINES, IOWA 50319 \* (515) 281-3084/3355  
FAX (515) 281-5995/4424 \* E-MAIL [jroyce@legis.state.ia.us](mailto:jroyce@legis.state.ia.us)

# THE RULES DIGEST

July, 2004

Scheduled for committee review

**Thursday, July 8<sup>th</sup> 2004**

**Statehouse Room #116**

Reference

XXVI IAB No. 25(06/09/04)

XXVI IAB No. 26(06/23/04)

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### **AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT**

10:00

Importation of feeder pigs, IAB Vol. XXVI, No. 25, ARC 3413B, EMERGENCY.

§202C.4, 2003 Supplement established an expanded financial surety requirement for feeder pig dealers in the form of a bond or an irrevocable letter of credit. It is intended to provide a secured asset for the recovery of damages incurred by a feeder pig purchaser who suffers damages because of sick or diseased pigs obtained from a feeder pig dealer. In late 2003 commentators stated that the surety bonds were extremely difficult to obtain at an affordable cost and some bonding companies had expressed unwillingness to write the necessary bonds. Under the program at that time the amount of the bond varied with the volume of business by each individual dealer. The bond was at least \$50,000 and not more than \$300,000.

In response to these concerns the legislature enacted House File 2475 in 2004; the Act lowers the specific dollar amounts required. The amount of the bond or irrevocable letter of credit is to be set on a sliding scale based upon the volume of sales by the feeder pig dealer. The minimum is now \$5,000 with a \$25,000 maximum. For good cause the department may increase this amount.

### **ADMINISTRATIVE SERVICES DEPARTMENT**

9:40

Printing services, IAB Vol. XXVI, No. 26, ARC 3415B, NOTICE.

For many years the printing division was essentially *the* printer for state government. The proposed chapter relating to state printing is similar to current provisions, but the difference is that printing is now a marketplace service. Agencies can choose to procure printing from the division or they may choose to solicit bids from private vendors, using formal or informal procedures as

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determined by the dollar value of the order. If agencies choose to procure printing on their own they must follow the guidelines set forth in proposed amendments to chapter 105. Also, under the current rules all printing presses and equipment in the possession of a Des Moines-based state agency are deemed to be under the control of the printing division. Under that provision an agency was required to justify the need for its own equipment. This restriction is now eliminated.

Information technology is now part of the Administrative Services Department. As provided in §8A.202 the department, rather than the information technology council, is now charged with the responsibility to develop standards for the procurement of information technology by participating agencies. Also, it is now the department, rather than the information technology council, that has the authority to grant waivers of standards to participating agencies. Pursuant to this mandate the department proposes a new rule relating to the procurement of information technology devices and services. Under these provisions technology devices and services must meet standards prescribed by the department. Purchases of \$50,000 and more must receive prior approval, rather than all purchases, as in current rules. The department will periodically audit compliance with the procurement procedures and operational standards. Operational standards are adopted by reference in this proposal.

### COLLEGE STUDENT AID COMMISSION

10:30

Tuition grant program, IAB Vol. XXVI, No. 26, ARC 3431B, NOTICE.

The tuition grant program is established in Iowa Code §261.9 for the benefit of Iowa residents attending an accredited Iowa private college or university and who establish financial need. Grants may be provide up to \$4,000 per year for up to eight semesters of undergraduate study (sixteen semesters for a part-time student). An accredited institution was, under prior law, defined as a private college or university, located in Iowa which

must be accredited or eligible for accreditation by the appropriate national accreditation body for that type of institution.

This program has been revised by the enactment of Senate File 2298; §238 of the Act places two additional restrictions on an accredited institution wishing to participate in the grant program. These changes are now set out in the proposed rule. First, the institution must be accredited by the North Central Association of Colleges and Schools (NCA); the current rule allowed an institution to be a candidate for accreditation. Second, the institution must be tax exempt under the federal Internal Revenue Code. Those for-profit institutions that are currently accredited are "grandfathered" in. Lastly, the institution must provide matching institutional funds for the tuition grant.

### ENVIRONMENTAL PROTECTION COMMISSION

11:00

Landfarming of oil-contaminated soil, IAB Vol. XXVI, No. 25, ARC 3397B, NOTICE.

Currently the EPC maintains a chapter of rules generally relating to the land application of waste. This proposal creates a specific regulatory program for the disposal of soil contaminated by petroleum product (PCS); these petroleum contaminants break down under exposure to air and sunlight and include gasoline, diesel fuel, kerosene, jet fuel, motor oil, or hydraulic fluid.

In essence this program provides for the issuance of a permit allowing petroleum contaminated soil to be spread out over a field (landfarm) and aerated, thus allowing the petroleum to bio-degrade. Two types of permits are available. One is for a single application of contaminated soil, the second allows multiple applications.

To be eligible for a single use permit no land within 15 feet of the boundary of the proposed operating area can have been used as a landfarm site in the past three years. For both types of permits the site cannot be with 500 feet of a well or a sinkhole; or within 200 feet of a residence,

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drainage tile, stream, lake, pond, wetland, or other surface water. Crops may not be grown within 15 feet of the landfarm. The landfarm cannot be located on a 100 year floodplain or a slope greater than five percent. Any area used for temporary storage of contaminated soil must be covered and have an impervious base. A groundwater monitoring process must be in place to measure any movement of the contaminants. Single use landfarms are deemed closed after the single application; multi-use farms may be closed only after two tests at down gradient monitoring wells measure within two standard deviations of the mean of up gradient wells, for each of three years after the final application.

The "landfarm season" runs from April 1 and ending October 31 of each year. PCS arriving at the site during the season may be stored no more than 7 days. Under some circumstances PCS may be applied off-season. Maximum application rates are established in a table based on the type of contaminant.

### HISTORICAL DIVISION

1:40

Fair Information Practices Act, IAB Vol. XXVI, No. 25, ARC 3423 and 3424B, NOTICE.

In 1984 the state Fair Information Practices Act was adopted, imposing a duty on state agencies to create policies dealing with "personally identifiable information." All agencies were required to adopt rules to:

- Describe the nature & extent of personally identifiable information and the legal authority to keep it.
- Describe which records are open and which are closed.
- Establish procedures for gaining access to public records, procedures allowing persons to review their own confidential records, and procedures allowing those persons to have those confidential records released.
- Identify whether the agency uses a data processing system which could be interfaced with another system to transfer information

The Historical Division is now updating its own rules and those relating to the state archive---the facility and process used to permanently store

agency records. The division holds a broad spectrum of records, including collections of printed material, photographs, archives, manuscripts and electronic records.

### HUMAN SERVICES DEPARTMENT

9:00

Child care eligibility, IAB Vol. XXVI, No. 25, ARC 3387B, EMERGENCY.

The department emergency implements a variety of changes to the child care assistance program. Eligibility has long been tied to the federal poverty guidelines; now, instead of actually listing the various income levels in the rules and updating them each time the amount changes, the rules will simply refer to the federal guidelines and list the actual dollar amount in the department manual. With some limited exceptions as set out in the rule, income cannot exceed either:

- 140 percent of the federal poverty level applicable to the family size for children needing basic care;
- 175 percent of the federal poverty level applicable to the family size for children needing special needs care; or
- 85 percent of Iowa's median family income, if that figure is lower than the other standards.

For eligibility purposes, the rule now lists some 27 exemptions from income, ranging from tax refunds, adoption subsidies to gifts.

The rule also establishes a chart to determine the fee, on a sliding scale, that the client must pay for child care services; the half-day fee ranges from fifty cents to a maximum of \$6.00. The care provider is responsible for the collection of the fee. Family monthly income varies from \$737 for a single member family up to \$5756 for a family of ten.

The current rule establishes a priority list because the need for day care services exceeds the department's ability to fund those services. This rule sets out a number of exceptions to the priority list. Exceptions include families that have protective child-care needs, FIP families or families that receive an adoption subsidy.

Another significant change is the elimination of any residence requirement to obtain child care services. Under this rule the applicant for child care services "living in the state of Iowa"; this includes

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persons living in Iowa for a temporary period, other than for the purpose of vacation.

### MEDICAL BOARD OF EXAMINERS

3:30

Criminal background checks, IAB Vol. XXVI, No. 25, ARC 3420B, NOTICE.

The board proposes to require applicants for licensure as a physician to submit a completed fingerprint packet and fee for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa Division of Criminal Investigation (DCI) and the Federal Bureau of Investigation (FBI). Several other licensing boards are considering similar rulemaking. This requirement would not apply to persons who had previously held an Iowa license within the prior twelve months. The fee for this service will be \$46, which is in addition to any other application fee that is required.

A similar plan, applying to a variety of licensed professions, was considered by the legislature two years ago, but was not enacted into law. That proposal, Senate File 235 passed the Senate unanimously in 2003 but was not considered by the House.

Authority for this proposal comes from the federal Volunteers for Children Act. §5119A of the Act provides that:

A State may have in effect procedures (established by State statute or **regulation**) that require qualified entities designated by the State to contact an authorized agency of the State to request a nationwide background check for the purpose of determining whether a provider has been convicted of a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities.

The federal government has determined that care providers who serve children, the elderly, or individuals with disabilities may be subject to these background checks. Under this process the medical board would be designated as an "authorized agency" by the state Division of Criminal Investigation and thus could request the desired checks. Any information received under this program would be confidential.

### PUBLIC HEALTH DEPARTMENT

2:00

Center for congenital and inherited disorders, IAB Vol. XXVI, No. 25, ARC 3412B, NOTICE.

House File 2362 has revised and renamed Iowa's Birth Defects Institute---now called the Center for Congenital and Inherited Disorders; the Act has also expanded the centers function. The program was last updated in 1995 and 2001. The term 'birth defects' is no longer used in the program; instead, the Act refers to 'congenital and inherited disorders'. Section six of the Act specifically requires that all newborns born in this state be screened for congenital and inherited disorders.

This program is not free. Under the rules the department will annually review and determine the fee to be charged for all activities associated with the neonatal metabolic screening program. Beginning August 1, 2003 the screening fee is set at \$56. Part of this fee will fund the provision of special medical formula for eligible individuals identified through the program who have inherited diseases of amino acids and organic acids. The rules set out an income based test to determine eligibility.

Generally, the newly-renamed center is charged with the responsibility to provide a clearinghouse for information relating to congenital and inherited disorders. It will administer a statewide screening program for these disorders and designate a laboratory to conduct these tests; under the rules the department has designated the University Hygienic Laboratory as the testing facility. Additionally, the center will gather information relating to these disorders and maintain a central registry to compile, evaluate, retain, and disseminate information on the occurrence, prevalence, causes, treatment, and prevention of congenital disorders. The center will also implement education programs relating to genetic disorders, for health care professionals and trainees.

### STATE PUBLIC DEFENDER

9:20

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Indigent defense, IAB Vol. XXVI, No. 25, ARC 3443B, EMERGENCY.

This extensive revision sets out in great detail the fee structure and restrictions for attorneys providing indigent defense. The rules now detail the criminal actions for which a fee may be paid from the indigent fund and also reflect the statutory prohibition against paying for administrative actions through the indigent defense fund. House File 2138 has added juvenile court proceeding under chapter 600 to the list of eligible proceedings.

The fee schedules for a variety of cases are revised; the rule is substantially the same as the present rules, and the specified fees are the same.

The proposal adds a new chapter 13, relating to fees for other professional services. The defense fund will pay for a variety of defense related services, including: investigators, interpreters, expert witnesses, certified shorthand reporters, and medical/psychological evaluations. The rule sets out the approval criteria for each of these additional services; court approval is required for all services. In the event a claim is rejected by the public defender, the claimant may seek review from the trial court.

### RECORDS COMMISSION

1:50

Organization & operations, IAB Vol. XXVI, No. 25, ARC 3426B, ADOPTED.

With the enactment of Chapter 305, Code supplement 2003, it has become necessary to completely re-write the record retention policies of the state; this is the first re-write in almost 30 years. The current provisions set out a brief set of rules for organization and operation followed by a brief overview of the records management manual---the document that details the states record retention policies. Under this proposal an entire chapter is dedicated to the updating of the manual itself (Ch. 14).

The new rules set out far more detail relating to records retention and handling. Under these rules agencies are responsible for the evaluation of records to determine their administrative, legal, fiscal and historical values in order to establish

appropriate periods of time for holding records in office and storage areas prior to final disposition, either by destruction or permanent preservation. As part of that evaluation process each agency must maintain an inventory of records, on a form specified by the commission, that are made, produced, executed, or received by the agency pursuant to statute "in connection with the transaction of official business". The form will be used to determine the ultimate disposition of each record.

As part of the program the commission operates the state records center, which is a secure, low-cost storage facility for the temporary storage of records. Central offices of state agencies must, and field offices *may*, use the state records center for storage of temporary. Access to these records is detailed in chapter 5 of the proposal. Access is limited to agency personnel; the records commission is not the actual custodian of these records, thus public access is controlled by the agency.

### UTILITIES DIVISION

2:10

Utility payment plans, IAB Vol. XXVI, No. 25, ARC 3411B, NOTICE.

The board proposes a revision to its rules restricting the shutoff of residential service. For persons eligible for low-income energy assistance service cannot be disconnected from November 1 through April 1. Service may be disconnected only between the hours of 6 a.m. and 2 p.m., Monday through Friday; service cannot be disconnected if the temperature is forecasted to be 20 degrees Fahrenheit or less during the following 24-hour period.

The mandatory offering of a payment plan has always been part of the utility shutoff limitation. Current rules require utilities to offer a customer an opportunity to enter into a reasonable payment agreement as an alternative to utility shut-off. This

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proposal would require utilities to offer a second agreement to a customer current in default of a first agreement if: the customer has made at least two payments under the first payment agreement, and has paid at least 33 percent of the balance owed under the first payment agreement.

The customer is required to pay for current service usage plus the monthly payments under the second payment agreement.

### VOTER REGISTRATION COMMISSION

2:30

Voter registration, IAB Vol. XXVI, No. 25, ARC 3428B, NOTICE.

Senate File 2269 has amended Iowa's voter registration laws in a variety of ways. Perhaps the most significant change requires, by January 1, 2006, that the state establish a statewide computerized voter registration file. The file will contain the name and registration information of every legally registered voter in the state. In an effort to purge the entire system of ineligible voters, this system will be coordinated with other state databases, including driver's license records, records of convicted felons and persons declared incompetent to vote, and records of deceased persons.

Another significant change requires more rigorous proof of identity. A first-time voter who has registered by mail, at the time of voting must present a current and valid photo identification card, or a current document that shows the name and address of the registrant; under the Act these include a utility bill, bank statement, paycheck government check or other government document. If the voter mails an absentee ballot a copy of the identification must accompany the ballot.

Also under the Act a registration application must contain the name, sex, date of birth, driver's license, identification card number, social security card number or residence address of the registrant. If any of this information is omitted the registration cannot be processed and the applicant will be notified that registration has not been completed.

Pursuant to §18 of the Act, registration records will be separated into six categories, called "status codes":

- Active-registration is complete and in good standing.
- Inactive (I). The registration will be deleted after two general elections unless the registrant either votes or responds to a confirmation mailing.
- Pending (P). Any application received by mail before September 10, 2004 cannot be activated until the registrant provides one of the required identification documents or the registrant's identification number is verified.
- Local (L). The registrant applied by mail to register to vote and failed to check the box on the voter registration form indicating that the applicant is a U.S. citizen.
- Pending and inactive (N). The applicant must comply with the requirements to correct both of these status codes.
- Local and inactive (C). The applicant must comply with the requirements to correct both of these status codes.